SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 258

L. K. PERSON,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF THEREON.

L. K. PERSON,
Attorney pro se.

NELSON PRINTING CO., TEXARKANA

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TO SAID HONORABLE COURT:

Petitioner, L. K. Person, a resident and citizen of the State of Arkansas, prays this Court for the Issuance of a *Writ of Certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit to review a final judgment and decision of said court entered the 16th day of May, 1940 (R. 25-29) affirming a decree of the District Court of the United States for the Western District of Arkansas entered on the 21st day of March, 1939 (R. 17). A petition for rehearing was duly filed and overruled on the 11th day of June, 1940 (R. 47). A Motion for Stay of Mandate

was duly filed, and an order granting same was issued on the 22nd day of June, 1940 (R. 49), so that this petition is filed within the time prescribed by the Act of February 13, 1925, on which jurisdiction rests.

The respondent, The United States of America, was plaintiff in the trial court on its plea therefor (R. 2), and was appellee in the Circuit Court of Appeals.

Statement of the Matters Involved.

The petitioner, L. K. Person, executed his promissory note in the sum of $3,000.00 payable to the Secretary of Agriculture, dated March 25, 1931, payable October 31, 1931, with interest at the rate of five per centum per annum. Payments on said note were made by L. K. Person by shipments of cotton to the Mid-South Cotton Grower's Association in the fall of 1931. Said association sold the cotton and applied the proceeds thereof on said note without any knowledge thereof on the part of L. K. Person. Said payments purported to be the proceeds of the sale of 36 bales of cotton. L. K. Person asks an accounting of said cotton in his "Motion of Defendant to Require Plaintiff to make Complaint More Definite and Certain" (R. 5) wherein he claims that he should have been credited with 76 bales of cotton instead of 36 bales as is shown in "Plaintiff's Reply to said Motion"

(R. 6). L. K. Person filed with the Circuit Court of Appeals a receipt from the payee showing that he owed a balance of $1,000.00 on said note, and a letter from Milton B. Shroyer, Representative Emergency Crop and Feed Loan Office notifying him that he owed $1,000.00, dated February 28, 1936 (R. 40). Said Complainant claims that a balance is owed on said note of $1,914.57 (R. 3). Said Complaint was filed October 15, 1937. L. K. Person, after he was unable to secure an accounting for all his cotton by motions and demurrer, filed his Answer and plead limitations (R. 10), and filed as an exhibit thereto a copy of a crop mortgage executed by L. K. Person to the United States Department of Agriculture, executed March 25, 1931 (R. 13) as security for said loan.

Respondent in the complaint does not claim that L. K. Person made any payments on said note after 1931. It is claimed that the Mid-South Cotton Grower's Association made payments in 1934, and that the Association was L. K. Person's agent. Petitioner denies that the Association was his agent, and includes in his Answer a general denial of all material allegations of the Complaint.

Respondent Prayed:

"Judgment against the defendant, L. K. Person, in the sum of $1,914.57, plus accrued and delinquent interest to October 1, 1937, in the sum of $533.71, making a total of $2,448.28, as of October 1, 1937, together with all costs hereinabout this cause expended, for which in due course let execution issue." (R. 3.)

Summary judgment was entered March 21, 1940, including therein, principal $1,914.57 plus accrued interest $704.88, making in the aggregate $2,619.45, and costs (R. 17).

The Circuit Court of Appeals affirmed said judgment, but without taxation of costs (R. 29, 30).

Questions Presented.

1. **Laws of Arkansas**—*Statutes of Limitations*; Sections 8933 and 8934 *Pope's Digest of the Statutes of Arkansas.* The rights of the United States with reference to private rights acquired in property (note and mortgage) are determined by the Laws of Arkansas.

2. **Laches is imputable to the United States.** When the United States came into court as a property owner, not as a sovereign to enforce a public right, they had no greater rights or privileges than other property owners and the Statute of Limitations runs against

them. When the United States became parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances.

3. **Could the Mid-South Cotton Grower's Association bind petitioner by said payments?** Petitioner denies that the Association was his agent; that the acts of the Association were his acts; that said payments, by the Association, constituted an admission, by him, of the continued existence of the debt, and an implied promise to pay the remainder of the debt.

4. The Circuit Court of Appeals erred in upholding the summary judgment of the lower court upon the ground there was "no controverted issue of fact," saying:

"No such issues appear from the pleadings upon which the case was tried. The petition alleged the loan, certain payments thereon and sought judgment for the unpaid balance. The answer was a general denial and a plea of limitations. The answer admitted the note and mortgage. The only allegations in the answer referring to payments did not challenge the amounts but (for purposes of limitations) denied any payments had been made beyond a certain date." (R. 27, 28.)

The Court will notice in reading the Answer (R.

11), near the middle of the page, that petitioner used the following language with reference to the note and mortgage:

"Plaintiff's Complaint states that said indebtedness therein alleged by plaintiff was due as follows:" In all of petitioner's pleadings when the note and mortgage was referred to, plaintiff's allegations were quoted, and petitioner admitted nothing. Since respondent failed to account for all of petitioner's cotton, petitioner had the right to test the accuracy of respondent's allegations in a trial thereof. Petitioner further had the right to place in evidence, the facts as to whether or not the United States was engaged in business.

Reasons Why Writ Should Be Allowed.

1. The United States Circuit Court of Appeals for the Eighth Circuit has decided an important question of national concern upon which there has been no prior decision. Namely, the question, "When the United States become parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances."

Apparently, under these decisions, the United States is treated as in business when it becomes a party to

commercial paper, regardless of why it became such party thereto.

United States v. *Bank of Metropolis*, 15 Peters 377;

Cotton v. *United States*, 52 U. S. 228;

Cooke, et al., v. *United States*, 91 U. S. 389. In this decision, note page 398: "Laches is not imputable to the government, in its character as sovereign, by those subject to its domain. Still a government may suffer loss through the negligence of its officers. If it comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals there."

The laws pertaining to Government agricultural loans are listed in *U. S. Code Annotated* under the title of "Banks and Banking." Loaning money at 5% interest and taking notes and mortgages to secure same, places the government in business for profit.

In *Osborn* v. *U. S. Bank*, 9 Wheaton 737, the court said:

"The trade of banking is strictly a private concern."

The Sloan Shipyards Corporation, et al., v. *U. S. Shipping Board Emergency Fleet Corporation and the United States*, 258 U. S. 549, shows that when this vitally necessary governmental instrumentality en-

gaged in business, it was subject essentially to the same laws as private business. The court said: "The Emergency Fleet Corporation though an agent of the government, clothed with very great powers, was nevertheless answerable for its acts as was other corporations."

In support of petitioner's contention that the laws of Arkansas are controlling with reference to the promissory note and mortgage, executed in Arkansas — private rights obtained under Arkansas Law by the United States of America—petitioner first shows a decision in point rendered by our Eighth Circuit Court of Appeals:

In *Denver & R. G. R. Co.* v. *United States*, 241 Fed. 614, the court said: "While the government is bound by no statute of limitations in a suit brought by it as a sovereign to enforce a public right, when it sues a railroad company under Act of Colorado, for the value of timber on government land destroyed by fire it sues as a property owner with no greater rights or privileges than other property owners, and its action is barred when not brought within the time prescribed by the statute."

This decision quotes *Lorman* v. *Clarke*, 2 McLean 568, Fed. Cas. No. 8516: "No foreign principles at-

taches to the Federal Courts in exercising its powers within the state. It gives effect to the local law, under which the contract was made, or by virtue of which the right is asserted."

In *Wheaton* v. *Peters*, 33 U. S. 591, the court said:

"It is clear there can be no common law of the United States; the federal government is composed of 24 sovereign and independent states, each of which may have its local customs, usages, and common laws; there is no principle which prevades the Union, nad has the authority of law, that is not embodied in the Constitution or laws of the union. The common law could only be made a part of our system by legislative adoption. When a common-law right is asserted, we look to the laws of the state in which the controversy originated."

3. **Could the Mid-South Cotton Grower's Association bind appellant by said payment in tolling limitations?**

Appellant claims that said association was not his agent; that the acts of the association were not his acts; that said payment did not constitute an admission by petitioner of the continued existence of the debt, the correctness thereof, and an implied promise to pay the debt.

25 A. L. R. 62;

Cox v. *Phelps*, 65 Ark. 1;

Brown v. *State Bank*, 10 Ark. 134;

Smith v. *Farmer's & M. Bank*, 184 Ark. 235;

Meisner v. *Palter*, 170 Ark. 217.

In *Taylor* v. *White*, 182 Ark. 433, the court shows that application of the proceeds of mortgaged property to a debt by the payee, does not toll limitations.

4. Petitioner did not admit, in his answer, except possibly by implication, his execution of the note and mortgage.

WHEREFORE, Petitioner respectfully prays that a *writ of certiorari* be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Eighth Circuit commanding that court to certify and send to this court for review and determination a full and complete transcript of the record and all proceedings in the Cause entitled *L. K. Person, Appellant,* v. *United States of America, Appellee,* numbered 11,508 Civil, on its docket, and that the judgment and decree of said Circuit Court of Appeals may be reversed or remanded for trial by this

Honorable Court, and that Petitioner have such other and further relief as may seem meet and just.

J. L. Person

Attorney pro se,
Garland, Arkansas.

SUPPORTING BRIEF.

TO THE SAID HONORABLE COURT:

No opinion was rendered by the trial court. The opinion of the Circuit Court of Appeals is not reported, but is listed in the records of the Eighth Circuit as *L. K. Person* v. *United States of America.*

Jurisdiction.

The judgment and decree to be reviewed was rendered and entered May 16, 1940 (R. 25-30). Petitioner filed his Petition for Rehearing on May 31, 1940 (R. 31), which was within the time allowed by Rule 18 of said Court. The Petition for Rehearing was denied without further opinion on June 11, 1940 (R. 47). Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C. S. 347(b)).

Facts.

The pertinent and controlling facts on this application are stated in the petition at pages 2 to 4, to which reference is made. Applicability of those facts to particular points hereinafter presented will be made in connection therewith.

Specification of Errors.

"Questions Presented," 1 to 4, both inclusive, pages

4 to 6 of the petition, are here adopted, and together with "Reasons Why Writ Should Be Granted," 6 to 10, both inclusive, and together presented as Assigned Errors.

Each of the above errors were assigned in Petition for Rehearing before the Circuit Court of Appeals (R. 31 - 45).

Points 1 and 2.

These points are closely interwoven and are best argued together. They involve limitations and laches as pertaining to the government when in business. The argument and citations applicable here are largely stated in the Petition.

Authorities.

United States v. *Bank of Metropolis*, 15 Peters 377;

Cotton v. *United States*, 52 U. S. 377;

Cooke, et al., v. *United States*, 91 U. S. 496;

Osborn v. *U. S. Bank*, 9 Wheaton 737;

Sloan Shipyards Corporation et al., v. *U. S. Shipping Board Emergency Fleet Corp. and United States*, 258 U. S. 549;

Denver & R. G. R. Co. v. *United States*, 241 Fed. 614;

Lorman v. *Clarke*, 2 McLean 568, Fed. Cas. No. 8516;

Wheaton v. *Peters*, 33 U. S. 591.

Argument.

In the past few years the United States has entered into many fields of business. Among the first of these enterprises were the Federal Land Banks. Just preceding and during the War the government undertook many enterprises, the Emergency Fleet Corporation, The United States Grain Corporation, The War Finance Corporation, The United States Sugar Equalization Board, Inland Waterways Corporation, The Federal Intermediate Credit Banks, The Home Owner's Loan Corporation, etc., and the Secretary of Agriculture was authorized to set up a credit organization, the Farm Board. Later, under Executive Order No. 6084, the Federal Farm Credit Administration was given the former duties of the Farm Board. They have charge of the Federal Land Banks, loan to farmers direct, form lending associations, *i.e.*, Live Stock Loan Association, Agricultural Credit Corporations, Fruit Growers' Loan Association, and the National Farm Loan Association. All these farm lending instrumentalities are under one head, The Federal Farm Credit Administration. The Government furnishes all the money to go into business. The bor-

rowers subscribe for stock, and pay for same by leaving part of the money borrowed in the loan association. These organizations have regional officers who take the paper of many local loans and sell said obligations in the money marts of the nation. One of the functions of the Farm Credit Administration is to enter into partnership with private business and operate in concert or competition with private business.

As President Roosevelt stated, "I am proud that the Administration has reduced interest rates." The banks are now loaning money to farmers at 5% in competition with the government. The banks show a profit at this rate or else they would not do it. Therefore, the government was in business for profit, even though at first they were loaning money at cheaper interest rates than competitive lenders.

The government is guilty of laches when six years after the loan was due it brings suit for $1,914.57, when by letter and receipt (Filed with the Clerk of the Circuit Court of Appeals) it has previously notified petitioner that he owed $1,000.00. Petitioner is caused to face a loss due to the loss and misplacing of many documents pertaining to said loan and settlement.

Point 3.

Petitioner states that the Mid-South Cotton Grower's Association was not his agent. Even if it were, an agent cannot bind his principal by payment so as to toll limitations, because: Said payment did not constitute an admission by petitioner of the continued existence of the debt, the correctness thereof, and an implied promise to pay the debt.

Authorities.

25 A. L. R. 62;

Cox v. *Phelps*, 65 Ark. 1;

Smith v. *Farmers' & Merchants Bank*, 184 Ark. 235;

Taylor v. *White*, 182 Ark. 433.

Argument.

Fully stated in the petition, and not necessary.

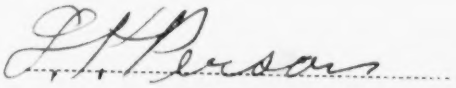
Point 4.

Petitioner did not admit in his answer, except possibly by implication, his execution of the note and mortgage (R. 10). Therefore, respondent should be required to prove its allegations in a trial thereof.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its super-

visory powers in order that the errors herein pointed out may be corrected; that the decision of the Circuit Court of Appeals should be conformed to the decisions of this Court; that a departure from the accepted and usual course of judicial procedure should be rectified: and to such end a *writ of certiorari* should be granted and this Court should review the decision of the Circuit Court of Appeals for the Eighth Circuit, and finally reverse it, or reverse and remand with or without instructions.

Respectfully submitted,



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No. 258

In the Supreme Court of the United States

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L. K. PERSON, PETITIONER,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The judgment of the District Court (R. 17) was entered without an opinion. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 26–29) is reported in 112 F. (2d) 1.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Eighth Circuit was entered May 16, 1940 (R. 29–30). A petition for rehearing was denied June 11, 1940 (R. 47). The petition for a writ of certiorari was filed July 19, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a state statute of limitations bars a suit by the United States to recover an unpaid balance due on a crop loan.

2. Whether, under Rule 56 of the Rules of Civil Procedure, judgment on the pleadings was properly entered in favor of the United States.

STATEMENT

On October 15, 1937, the United States brought suit on a note against the petitioner in the United States District Court for the Western District of Arkansas (R. 2). The complaint alleged that the petitioner had made, executed, and delivered to the Secretary of Agriculture of the United States [1] a promissory note in the sum of $3,000, dated March 25, 1931, due on or before October 31, 1931, with interest at the rate of 5 percent per annum (R. 2), and that, after allowing certain credits against the principal and interest, there remained due and owing on the note the sum of $1,914.57 principal, together with accrued interest, for which amount, judgment was prayed (R. 2–3). The note was given in consideration of a loan made by the Secretary of Agriculture, pursuant to the Joint Resolution of Congress approved December 20, 1930,

[1] The complaint also alleged that the President of the United States, by Executive Order dated March 27, 1933, (No. 6084) appointed the Governor of the Farm Credit Administration as successor of the Secretary of Agriculture "agent and payee of the plaintiff herein" (R. 2).

46 Stat. 1032, for the purchase of seed, fertilizer, and feed for work stock (R. 3–4), and was secured by a mortgage on the crops growing, or to be grown, on a certain parcel of land during the year 1931 (R. 12–13). The petitioner filed two motions requiring the respondent to make the complaint more definite and certain (R. 4, 5–6); the motions were overruled after the United States had made its complaint more definite and certain with respect to the dates and manner in which the credits were computed (R. 6–7). A motion to dismiss was also overruled (R. 10), and the petitioner filed an answer (R. 10–12) which, after entering a general denial, set up affirmatively the Arkansas statute of limitations of five years as a "complete defense," and denied that any payments were made on the note by petitioner after the year 1931 (R. 10–12). The crop mortgage was attached to the answer as an exhibit (R. 11, 12–14). The United States thereupon moved for a judgment on the pleadings and in support of such motion submitted an affidavit [2] of the regional manager of the Emergency Crop and Feed Loan Office, Farm Credit Administration, at Memphis, Tennessee, setting forth the amount due

[2] The court below held that the affidavit was insufficient under Rule 56 (c) of the Rules of Civil Procedure to support a summary judgment inasmuch as it failed to recite that it was made "on personal knowledge." The court, however, held that the insufficiency of the affidavit would not require reversal as it had to do with payments on the note, and that no issue as to payments was drawn by the pleadings (R. 29).

on the note and the manner in which the balance due was calculated (R. 14–16). The original note was also filed (R. 17). The District Court thereupon entered judgment for the United States (R. 17); the Circuit Court of Appeals for the Eighth Circuit affirmed (R. 29–30).

ARGUMENT

1. The petitioner contends that, by lending money to a farmer at commercial rates of interest, the United States divests itself of its sovereignty with respect to the transaction and, in a suit to recover such a loan, subjects itself to state statutes of limitations—in this case the five-year statute of the State of Arkansas. This precise question was before this Court in *United States* v. *Summerlin*, No. 715, October Term, 1939, decided May 27, 1940.

In the *Summerlin* case, the United States had insured a loan, evidenced by a note, under the Federal Housing Administration Act. The maker defaulted and soon thereafter died, and the United States reimbursed the insured institution, taking an assignment of the note. It then sought to file its claim with the Florida administratrix of the original debtor after the expiration of the time provided under the state statute for the filing of such a claim. The Florida courts rejected the claim of the United States, holding that it had become void because it had not been filed with the administratrix within the statutory period. There, as here, the argument was advanced that the

United States, by lending money at interest, had entered the commercial field and had so divested itself of its sovereignty as to be subject to state statutes of limitations. It was further urged that when the United States becomes a party to a negotiable paper, it is subject to all defenses that might be advanced against a private party. This Court rejected these contentions, and reaffirmed the rule that the United States is not bound by state statutes of limitations or subject to the defense of laches in enforcing its rights. We respectfully submit that the *Summerlin* case is decisive of the present controversy.

2. The petitioner also urges that the court below erred in affirming the order of the District Court granting judgment on the pleadings. The petitioner does not contend that he did not execute the note; indeed he concedes that he may have admitted its execution by inference (Pet. 10, 16).[3] He does contend, however, that he was entitled, under the pleadings, to present evidence to show that the United States was engaged in business and to test the accuracy and sufficiency of the amount of the credits allowed him (Pet. 6).

The question as to whether the United States was acting in a commercial and not a sovereign capacity is a question of law which does not de-

[3] The original note itself was filed with the District Court (apparently without objection on the part of the petitioner), and is included in the record (R. 17).

pend for its solution upon evidence. See pp. 4–5, *supra*. With reference to the question of the amount of payments made or credit given, the court below correctly observed (R. 28) that the "only allegations in the answer referring to payments did not challenge the amounts but (for purposes of limitations) denied any payments had been made beyond a certain date." Under Rule 12 (b) and (h) of the Rules of Civil Procedure, as well as under applicable Arkansas law (*Interstate Jobbing Company* v. *Velvin,* 172 Ark. 212), payment is a defense which must be pleaded affirmatively. Since no issue of payment was raised by the pleadings in the instant case, any evidence relating to such an issue would have been inadmissible. Plainly there was no error in granting a summary judgment on the pleadings.

CONCLUSION

The decision of the court below is correct. There is no conflict. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

FRANCIS BIDDLE,
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FRANCIS M. SHEA,
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PAUL A. SWEENEY,
Special Assistant to the Attorney General.

AUGUST 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940